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**way Crossing by Railroad.**—Mandamus is the proper remedy to compel a railroad company to perform its duty to restore steps on a public footpath crossing its tracks and to maintain a flagman at that point as directed by the city council.

[Ed. Note.—For other cases, see Mandamus, Cent. Dig. §§ 266, 267; Dec. Dig. § 132.\* 9 Va.-W. Va. Enc. Dig. 538.]

Error to Corporation Court of Bristol.

Mandamus by the City of Bristol against the Norfolk & Western Railway Company. Judgment for the plaintiff, and defendant brings error. Affirmed.

*Lucian H. Cocke*, of Roanoke, and *S. V. Fulkerson*, of Bristol, for plaintiff in error.

*Floyd H. Roberts*, of Bristol, for defendant in error.

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WESTERN UNION TELEGRAPH CO. *v.* FIRST NAT. BANK  
OF BERRYVILLE et al.

Nov. 12, 1914.

[83 S. E. 424.]

**1. Commerce (§ 8\*)—Interstate Commerce—Regulation by Congress—Effect.**—Act Cong. June 18, 1910, c. 309, 36 Stat. 539 (U. S. Comp. St. 1913, § 8563 et seq.), which placed telegraph companies with respect to interstate messages in the same class as other common carriers, and made such companies liable under the federal law for any dereliction in duties, superseded state statutes imposing penalties for failure to promptly transmit messages, in so far as statutes apply to interstate messages.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 5; Dec. Dig. § 8.\* 7 Va.-W. Va. Enc. Dig. 872; 13 Va.-W. Va. Enc. Dig. 181.]

**2. Costs (§ 99\*)—Imposition—Reversal on Appeal.**—Where a bank, to whom a telegram was directed, sued for the benefit of the person injured by the delay in transmission of the message, and the fact was recognized at trial, the judgment providing that it was for the use of such person, the bank is on reversal on writ of error entitled, under Code 1904, § 3546, declaring that when a suit is in the name of one person for the benefit of another, if there shall be judgment for defendant's costs, it shall be against that other, to demand that any judgment for costs be rendered against the person for whose benefit the suit was brought.

[Ed. Note.—For other cases, see Costs, Cent. Dig. §§ 388-391; Dec. Dig. § 99.\* 3 Va.-W. Va. Enc. Dig. 620.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Circuit Court, Clarke County.

Action by the First National Bank of Berryville and Mrs. J. R. Elder against the Western Union Telegraph Company. There was a judgment for plaintiffs, and defendant brings error. Reversed.

*McCormick & Smith*, of Roanoke, *Geo. H. Fearons*, of New York City, *Hughes, Little & Seawell*, of Norfolk, for plaintiff in error.

*A. Moore, Jr.*, and *Conrad Kownslar*, both of Berryville, for defendants in error.

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STARKE *v.* COMMONWEALTH

Nov. 12, 1914.

[83 S. E. 545.]

**Assault and Battery (§ 92\*)—Conviction—Sufficiency of Evidence.**—In a prosecution for malicious shooting with a pistol, evidence held not sufficient to sustain a conviction.

[Ed. Note.—For other cases, see Assault and Battery, Cent. Dig. §§ 137-139; Dec. Dig. § 92.\* 1 Va.-W. Va. Enc. Dig. 739.]

Error to Circuit Court, Brunswick County.

F. W. Starke was convicted of malicious shooting with a pistol, and he brings error. Reversed.

*Turnbull & Turnbull*, of Lawrenceville, for plaintiff in error.  
*Attorney General*, for the Commonwealth.

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CHESAPEAKE & O. RY. CO. *v.* KIDD.

Nov. 12, 1914. Rehearing denied Jan. 12, 1915.

[82 S. E. 933.]

**Railroads (§ 383\*)—Injury to Person on Track—Contributory Negligence.**—A person injured from being struck by a train while he was standing on the track conversing with an acquaintance could not recover from the railroad company, where he would have seen the approaching train had he not failed to look for same, and there was nothing to put the trainmen on notice that plaintiff was paying no heed to his danger.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1305-1310; Dec. Dig. § 383.\* 11 Va.-W. Va. Enc. Dig. 592.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.